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ROADSIDE MARKET OPERATORS PONDER BUSINESS STRUCTURE

By Paul L. Wright

Extension Agricultural Law Specialist

Ohio State University

Roadside market operators probably raise more questions about business structure than any other type of farm business. How shall the business be organized, as a sole proprietorship, partnership or corporation? Actually this question goes further, should the total farm assets be placed in the same entity as the roadside market or should the market be separate?

With one person involved the form of business options are either a sole proprietorship or a corporation. If two or more people are involved as owners the options are a partnership or a corporation. With a partnership there are two options a general or limited partnership. And with a corporation there is the possibility of either a regular corporation or a corporation taxed like a partnership, an S corporation.

Several factors impact on this business structure decision. Is there a liability concern with the market? Are there income tax concerns? Are there children or other individuals wishing to become involved in the business? How large is the market in relation to the total farm business? Is the market

being run separately from the total farm? What are the future plans for the market? Are there business and estate plans which could be facilitated? And numerous other questions could be raised. Time needs to set aside periodically to review these and other questions as a roadside market operation is pursued.

One of the concerns of business people is liability exposure. There is no doubt a greater degree of liability exposure with a roadside market than with a general farming operation. The three major sources of liability are accidents, financial difficulties and taxes. Forming a corporation does afford a degree of protection from these concerns. With either the sole proprietorship or a partnership all the assets of the owner or owners are subject to a liability claim. The general rule for a corporation is that the liability is limited to the assets in the corporation. There are exceptions to this rule. The three major exceptions are: (1)if the owner who is also serving as an employee of the corporation is negligent in any conduct which results in an accident, (2)if the corporation was under capitalized just to take advantage of the limited liability or (3)if any owners signed for obligations as individuals. In any of these situations the limited liability concept may not hold up.

Income tax management may be an objective of roadside market owners. If two or more owners become involved in the business then the tax obligations can be spread among the

owners. The spreading of tax obligations is possible if the ownership involves related or nonrelated parties. This option of spreading the tax responsibilities among individuals can be accomplished by either a partnership or a corporation. In addition, a regular corporation establishes yet another entity for taxation. Under current tax law the first federal tax bracket for a corporation is 15 percent while an individual may be experiencing much higher rates. If spreading of the tax burden is a major reason for forming a partnership or corporation it would be wise to delay the business organization decision until after the Congress completes its drafting of tax reform. A major thrust of the reform is to shift tax burdens from individuals to businesses.

Before going further with the discussion here is a word of caution. It appears to this point that a regular corporation is favored and almost recommended. This should not be assumed. There are many responsibilities which come with a corporation and many more reports which need to be filed. Once a corporation is formed the owners must make a commitment to keeping minutes, filing and paying the state franchise tax, filing and paying the corporate income tax, and making sure the employment taxes are paid and related tax forms are filed. It can not said that these requirements are all unique to corporations but they certainly can not be overlooked when considering a corporation.

If a partnership or a corporation is to be inniated for a roadside market operation an additional factor to consider is what assets are to be placed into the business. Options exist from placing the total farm into a new business entity to placing only enough cash in to operate the market, possibly only a checking account. It could be that a separation of assets into more than one business has advantages. This will enable different sets of owners, sometimes facilitate estate and retirement planning, and possibly limit the liability exposure to only the market assets. Of course the more businesses the more reports and the more legal relationships to be worked out among the entities, like leases and options for purchase.

If a partnership or a corporation is to be formed then a definite recommendation is to think through, draft and sign a buy sell agreement. At some point in time all businesses terminate or change owners. Such questions as how to value assets, what is the source or sources of dollars for funding a buy out and what events would trigger a buy out need to be addressed. Triggering events could include such as retirement, death, voluntarily leaving the business or divorce. Discussing and agreeing to these concerns is much easier when everyone is in the planning stages rather than after stressful events have occurred.

One big advantage of a multiple ownership arrangement is the spreading of management responsibilities. For example, one

person may be responsible for marketing while another is responsible for production. Another example is the ability for the owners to be away from the business periodically. The old saying, two heads are better than one, fits farm and roadside market operations well.

If parties are contrasting a sole proprietorship to a partnership or a corporation there are certainly some potential pitfalls to be given serious consideration. Is there enough income to spread among the owners? Will the personalities match? Will communication among owners be given top priority? Will the management decisions be shared? Do the parties have similar business objectives? Are the expectations of each other understood? And will spouses understand the business responsibilities? A breakdown in any one of these areas can cause a potentially successful business to fail.

This discussion has focused primarily on the options of a general partnership or a regular corporation. A limited partnership or a S corporation are possibilities as well. Forming a limited partnership provides opportunities for estate planning and sometimes for involvement of outside investors. Estate planning and a search for outside capital usually are not priority concerns of market operators.

The S corporation does provide most of the same corporate advantages as the regular corporation but has the unique

difference of not paying federal income tax. With the S corporation the tax deductions, credits and profits are allocated on to the owners. If a corporation is being considered then both the regular and the S need to be evaluated.

Business structure decisions for roadside market operators are important and need to be given attention periodically. Roadside markets have some characteristics which permit and may even encourage separate business entities. As these type decisions are pondered and put into effect the owners should look to individuals who have an expertise in business planning. There are accountants, attorneys and financial consultants who can be of assistance.